

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE

06-MD-1775

AIR CARGO SHIPPING SERVICES
ANTITRUST LITIGATION

ALL CASES

M.D.L. No. 1775

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ORDER

By letter dated July 3, 2007, the defendants Saudi Arabia Airlines and Thai Airways International Public Company Limited have advised the court of their intention to defer raising the issue of subject matter jurisdiction under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602, *et seq.* until after the court rules on other motions to dismiss the complaint. By letter dated July 9, 2007, the plaintiffs properly oppose this unilateral decision. The issue of subject matter jurisdiction is a threshold issue which the court is required to determine before addressing any other. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998) (“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”) (quoting *Ex parte McCardle*, 7 Wall. 506, 514, 19 L.Ed. 264 (1868)). Moreover, piecemeal, *seriatim* motions to dismiss will not serve the interests of the parties or the court in the orderly conduct of this litigation.

Accordingly, to the extent that the above defendants intend to assert lack of subject matter jurisdiction, they must do so now or be deemed to have waived it. *See* 28 U.S.C. § 1605(a)(1); *Canadian Overseas Ores Ltd. v. Compania de Acero del Pacifico S.A.*, 727 F.2d 274, 278 (2nd Cir. 1984) (district courts have discretion to determine that conduct of party constitutes waiver of foreign sovereign immunity in light of the circumstances of a particular case). As the

deadline for submission of motions is today, however, the above defendants and the plaintiffs are afforded an additional two weeks to serve moving, opposition and reply papers concerning that issue.

SO ORDERED:

Viktor V. Pohorelsky
VIKTOR V. POHORELSKY
United States Magistrate Judge

Dated: Brooklyn, New York
July 18, 2007